

REMARKS

Claims 1-7, 11, 12, 15 are rejected under 35 U.S.C. 102(a) as being anticipated by Takata (6,558,652).

It was said in the last office action that a gel membrane formed on glucomannan flour particles because "gelled flour particles are formed" (col. 1, lines 30-40, col. 2, lines 19-49).

The present claim 1 and 20 are amended. Claim 20 points out that a very high concentration of organic alcohol is required to consolidate the gel coat. This high concentration treatment is not disclosed in Takata. It is not disclosed in Kubodera. Neither reference discloses that such a high concentration alcohol would obtain a beneficial effect for the flour particles. This is because such references are directed to different problems and products compared with the invention process. The present inventor can claim to have found a beneficial effect of delaying swelling of the konjac flour particles. The references do not disclose that there is any benefit in such delay. The references would be rendered relatively useless by the present invention. The products of the reference processes require that mixing the particles in water would result in an almost instantaneous effect. Takata provides for an outer soft shell. Claim 20 is not anticipated or made obvious by Takata or Kubodera.

Claims 8 to 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Takata. Claim 19 was rejected under 35 U.S.C. 103(a) as being unpatentable over Takata as applied to the above claims, and further in view of Kubodera (4,851,394).

Claims 2 to 6, 11, 12, 15, and 19 are canceled. Claim 1 incorporates intervening limitations between original claims 1 and 13. Claims 1, 13, 14, 16, 17, and 18 are amended to clarify the subject matter.

The present claims overcome the above rejections. Claims 1 and 20 provide for a hard-shelled product at the end of the invention process. Although the references are superficially similar, the step (d) treatment is not found in the prior art with high concentration alcohol. The processes of claims 1 and 20 are not anticipated or made obvious by the references.

As in McGinley v. Franklin Sports, Inc. (No. 00-1324 (Fed. Cir. 08/21/2001)):

See In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) where the Court warned against falling victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher. The idea of making a hard shell on a konjac flour particle may seem obvious in light of the inventor's disclosure of its usefulness, a utility not previously taught in the prior art. The inventor's hard shell particle is new and not obvious.

In addition, the hard shell particle is not found inherently in the prior art.

Crown Operations International, Ltd. v. Solutia Inc., 289 F.3d 1367 (Fed. Cir. 2002)

"Regarding alleged anticipation by the Gillery patent, on its face the Gillery patent does not disclose or discuss a two percent limitation for the reflectance contribution of the solar control film. Crown maintains that the '511 patent merely claims a pre-existing property inherent in the structure disclosed in the prior art. Crown urges us to accept the proposition that if a prior art reference discloses the same structure as claimed by a patent, the resulting property, in this case, two percent solar control film reflectance, should be assumed. We decline to adopt this approach because this proposition is not in accordance with our cases on inherency. If the two percent reflectance limitation is inherently disclosed by the Gillery patent, it must be necessarily present and a person of ordinary skill in the art would recognize its presence. In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999); Continental Can, 948 F.2d at 1268, 20 USPQ2d at 1749. Inherency "may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." Id. at 1269, 20 USPQ2d at 1749 (quoting In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981)).

The references do not disclose any inherent use of high concentration alcohol at a second slurry step, a critical aspect of the invention.

Consideration of the above amendments and remarks is requested and it is submitted that such amendments and remarks place the application in a condition for allowance for claims 1, 6 to 10, 13, 14, 16 to 18, and 20. Applicant requests entry of amendments and allowance of such claims.

Respectfully submitted,

Dated: June 2, 2004

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Consideration of the above amendments and remarks is requested and it is submitted that such amendments and remarks place the application in a condition for allowance for claims 1, 6 to 10, 13, 14, 16 to 18, and 20. Applicant requests entry of amendments and allowance of such claims.

Respectfully submitted,

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